

REMARKS

Claims 1-32 are pending in the present application.

Claims 1-32 have been rejected.

No claims have been allowed.

Reconsideration of Claims 1-32 is respectfully requested.

Claim Rejections – 35 U.S.C. § 102(b) Anticipation

On Page 3 of the October 19, 2005 Office Action, the Examiner rejected Claims 1-18 of the Application under 35 U.S.C. § 102 (b) as being anticipated by United States Patent No. 5,764,949 to Huang *et al.* (hereafter “Huang”). On Page 3 of the October 19, 2005 Office Action, the Examiner also rejected Claims 1-18 of the Application under 35 U.S.C. § 102 (b) as being anticipated by Worker Exposure Surveillance System, 1997, Oak Ridge Associated Universities (hereafter “WESS”). On Page 3 of the October 19, 2005 Office Action, the Examiner also rejected Claims 1, 6, 11, and 15 of the Application under 35 U.S.C. § 102 (b) as being anticipated by United States Patent No. No. 4,769,772 to Dwyer. On Page 3 of the October 19, 2005 Office Action, the Examiner again rejected Claims 1, 6, 11, and 15 of the Application under 35 U.S.C. § 102 (b) as being anticipated by WESS.

Previous arguments and discussions with regard to Huang and Dwyer are incorporated herein by reference, and are re-urged.

It is axiomatic that a prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *See, In re King*, 231 USPQ 136, 138 (Fed. Cir. 1986) (citing with approval, *Lindemann Maschinenfabrik v. American Hoist and Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984)); *In re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 USPQ 619, 621 (Fed. Cir. 1985).

The multiple anticipation rejections are respectfully traversed, as below.

With regard to independent claims 1, 6, 11, and 15, the Examiner explicitly concedes on page 4 that Dwyer does not disclose that a controller operates to periodically distribute the database over memory units, and so the anticipation rejection of claims 1, 6, 11, and 15 over Dwyer fails.

On page 5, the Examiner explicitly concedes that Huang does not disclose that a controller operates to periodically distribute the database over memory units, and so the anticipation rejection of claim 1, 6, 11, and 15 over Huang also fails.

The Examiner has failed to make any showing that WESS meets the limitations of claims 1, 6, 11, and 15, and so fails to present even a *prima facie* anticipation rejection.

The anticipation rejections of claims 1, 6, 11, and 15, and of their respective dependent claims 2-5, 7-10, 12-14, and 16-18 are traversed. These claims should be allowed over each of these references, and reconsideration and allowance is respectfully requested.

In the interest of addressing the Examiner's specific points with regard to WESS, applicant notes that the file defragmentation process described in WESS and the Office Action do not meet the plain limitations of the claims. The Office Action incorrectly states that "WESS discloses an embodiment wherein the controller operates to periodically re-distribute the database over the memory units of the hard drive, ie [*sic*], the files of the database."

In a fragmentation process, as known to those of skill in the art, files are not "distributed" but are rather "compacted," that is, rewritten to contiguous blocks of sectors of hard disk space. The Examiner's statement appears to suggest that the "memory units" over which the database is "distributed" are "the files of the database." On the contrary, in a typical defragmentation process, individual files (including database files) are rewritten to be physically stored on substantially contiguous blocks of sectors. The hard drive's logical file structure is intended to be unaffected, so that programs can continue to operate normally. No databases would be "re-distributed" between files in the database, as the Office Action would appear to suggest.

WESS describes on page 31 that a hard drive should be defragmented, and indicates that a Microsoft tool should be used. Microsoft itself describes, with relation to "Windows 98":

When a program is installed on your computer, the program's files may be broken up over multiple locations on your hard disk. This is called fragmentation. If fragmentation occurs on your hard disk, the performance of programs on your computer is slower. The Disk Defragmenter tool optimizes the performance of your computer by reorganizing the files on your hard disk into contiguous blocks. When the Disk Defragmenter tool completes the defragmentation of files on your hard disk, the performance of your programs is faster because the files are arranged closer together.

(See <http://support.microsoft.com/default.aspx?scid=kb;EN-US;186171>)

In short, in a defragmentation process described in WESS and known to those of skill in the art, the "memory units" can only be hard disk sectors or blocks of them. Each of independent claims, claim 1, 6, 11, and 15 requires one or more computer systems having "distributed memory units." Pages 19-20 of the specification as filed describe:

"Distributed memory unit," for purposes hereof, can be defined broadly, as any at least two physically separate memory units, whether locally or remotely; for instance, memory units 108-112

are locally associated with database server 100. In contrast, according to a related embodiment, a remotely distributed memory unit may be physically associated with another server, in a computer on a connected local area network, wide area network, a connected computer somewhere on the Internet or the like.

As can be seen, in the context of the present application, no reasonable interpretation of the claim term “distributed memory units” can include individual sectors on a common hard disk drive. The Examiner’s use of a defragmentation process fails to be a “broadest reasonable interpretation” of the claims, in light of the plain meaning of “distributed” and the specific definition in the specification.

Therefore, WESS fails to teach this limitation of the claims.

Claim Rejections – 35 U.S.C. § 103(a) Obviousness

On Pages 10-17 of the April 21, 2005 Office Action, the Examiner rejected Claims 19-32 of the Application under 35 U.S.C. § 103 (a) as being obvious over *Huang* in view of United States Patent No. 5,689,648 to *Diaz*.

The Applicants respectfully submit that Claims 19-32 are not obvious in view of *Huang* and *Diaz*. The Applicants respectfully request the Examiner to withdraw the rejection of Claims 19-32 in view of the arguments below.

During *ex parte* examinations of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of non-obviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 USPQ 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references

when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not be based on an applicant's disclosure. MPEP § 2142.

The Applicants respectfully submit that the Patent Office has not established a *prima facie* case of obviousness with respect to the Applicants' invention. The Applicants hereby incorporate by reference all of the comments made above concerning the Applicants' invention made with respect to the *Huang* reference and the *Dwyer* reference.

On Page 12 of the April 21, 2005 Office Action, the Examiner stated that "Huang however, fails to disclose information that is commercial and likewise, a communication system that acts in the context of an E-Commerce system." (April 21, 2005 Office Action, Page 12, Lines 1-2). The Applicants respectfully traverse the assertion of the Examiner that the *Huang* reference discloses a security controller as disclosed and claimed by the Applicants. The Applicants also respectfully traverse the assertion of the Examiner that the *Huang* reference discloses an access controller as disclosed and claimed by the Applicants.

For the reasons discussed above with respect to the *Huang* reference the Applicants respectfully submit that the *Huang* reference does not teach the claim limitations of Claim 19 that relate to the Applicants' security controller 106 and to the Applicants' access controller 104. The Applicants also respectfully submit that the *Diaz* reference does not contain any elements that are analogous to the Applicant's security controller 106 and the Applicants' access controller 104.

Independent claim 19, similar to the claims discussed above for the anticipation rejections, requires “a database administrator for association with distributed memory units, said database administrator comprising: a security controller that operates repeatedly on a periodic basis to (i) divide said database into portions and (ii) store ones of said portions to ones of said distributed memory units, said security controller thereby systematically periodically redistributing said database over said distributed memory units”.

On page 10, the Examiner explicitly concedes that Huang does not disclose that a controller operates to periodically distribute the database over memory units. The Examiner makes no showing at all that this feature is taught or suggested by Diaz.

As the obviousness rejection is only over Huang in view of Diaz, and neither of these references teach or suggest the features of independent claim 19, claim 19 and dependent claims 20-32 are all allowable over Huang in view of Diaz, and the obviousness rejections are traversed.

Although these claims were not rejected over WESS, the comments above with respect to WESS also apply to claims 19-32.

Under the applicable law, a prior art reference (or prior art references when combined) must teach or suggest all the claim limitations. The Applicants respectfully submit that there is insufficient teaching or suggestion in the prior art to combine the *Huang* reference and the *Diaz* reference. The Applicants respectfully submit that even if the *Huang* reference and the *Diaz* reference could be properly combined (which the Applicants do not admit), there would still be no teaching or suggestion in the combination of all of the claim limitations of Claim 19. The

combination of the *Huang* reference and the *Diaz* reference is clearly legally insufficient to serve as a combination that would cause Claim 19 to be obvious. Therefore, the Patent Office has not carried the burden of establishing a *prima facie* case of obviousness.

The Applicants respectfully submit that the rejection of Claim 19 under 35 U.S.C. §103(a) as being obvious in view of the *Huang* reference and the *Diaz* reference should be withdrawn and that Claim 19 be passed to issue.

For the reasons set forth above, Applicants respectfully submit that Claim 19 contains unique and novel limitations. Applicants also respectfully submit that Claims 20 through 32 directly or indirectly depend from and contain all the unique and novel limitations contained in Claim 19. Therefore, Claims 20-32 are not obvious in view of the *Huang* reference or the *Diaz* reference of the combination of the *Huang* reference and the *Diaz* reference. The Applicants therefore respectfully submit that the rejection of Claims 19-32 under 35 U.S.C. §103(a) should be withdrawn and that Claims 19-32 be passed to issue.

The Applicants respectfully submit that Claims 1-32 are all patentable over the *Huang* reference and the *Dwyer* reference and the *Diaz* reference whether taken individually or in combination. The Applicants respectfully request that the rejection of Claims 1-32 be withdrawn and that Claims 1-32 be passed to issue.

The Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. The Applicants reserve the right to submit further arguments in support of their above stated position as well as the right to

introduce relevant secondary considerations including long-felt but unresolved needs in the industry, failed attempts by others to invent the invention, and the like, should that become necessary.

SUMMARY

For the reasons given above, the Applicants respectfully request reconsideration and allowance of pending claims and that this Application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: Jan. 19, 2006



William A. Munck
Registration No. 39,308

P.O. Drawer 800889
Dallas, Texas 75380
Phone: (972) 628-3600
Fax: (972) 628-3616
E-mail: *wmunck@davismunck.com*